

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5498 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SUTHAR BHIMJI VELJI

Versus

COLLECTOR

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Appearance:

MR SURESH M SHAH for Petitioner

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 17/02/97

ORAL JUDGEMENT

Suthar Bhimji Velji of Nakhatrana, Kutch District has filed the present petition. By this petition, the petitioner wants me to issue a direction to the respondents that the respondents should not dispossess him from the land which is in occupation without following due process of law.

2. From the averments made by the petitioner himself in his petition it would be quite clear that the

petitioner has raised one shed-cum-cabin on the public property of about 30 ft near Lakhpat-Bhuj road in the year 1994. It is pertinent to note that it is not the claim of the petitioner that he has taken the said land on lease either from the State Government or from the Panchayat and that he is paying rent for the same. The petitioner avers in his petition that the respondents are threatening him to remove from the said property. According to him, the property does not belong to the State Government and that the respondents have no authority to remove him from the same. According to him the property is belonging to the Gram Panchayat and the Gram Panchayat alone can remove him. From the material on record it is not possible to hold even prima-facie that his claim that the property is belonging to the Gram Panchayat is true and correct. The encroachment committed by the petitioner is by the side of the public road and it is on the public property. The petitioner has no legal right to remain in possession of the said property and therefore, he cannot come before this Court and say that his possession should be protected by asking the respondent to follow the due process of law and to follow the principles of natural justice. When the petitioner himself is a wrong doer to issue such a direction against the respondent will [ amount to giving a premium for his high handedness and unauthorised act of encroachment and therefore, the petitioner is not entitled to get such a relief as has been laid down by the Apex Court in its recent decision in the case of Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan and ors. AIR 1997 SC 152 wherein the following principles are laid down:

"The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic one to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for

passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public place. On the contrary, the longer delay, the greater will be danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be tardious and time consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Municipal Corporation allows settlement of encroachers for a long time for reasons best known to them and reasons are not for to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service of the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed."

The learned advocate at this stage seeks permission to allow him to withdraw this petition by submitting that if the above observation made by the court remained there on record, then there is likelihood of causing prejudice to him. But once the party sought a decision on merits and the party was not willing to withdraw the petition and when the court had expressed its opinion, it is not open for the party on finding that the decision is going against him, to withdraw the petition as has been held by the Supreme Court in the case of State of Maharashtra vs. I.P.Kalparai AIR 1996 SC 722 p.p.725.

The learned advocate for the petitioner is submitted before me that if the petitioner approaches the respondent-Collector or the Panchayat for getting his possession regularised, then said claim of him should not be rejected on account of this decision. If the

petitioner happens to make a representation to the respondent to regularise his cabin or to give the land on lease to him, then the respondent should consider the same on merits and to take necessary action on the said representation according to law. In the circumstances the petition deserves to be dismissed and accordingly the same is dismissed summarily. Notice discharged. No order as to costs.

(S.D.Pandit.J)